UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/AC.96/858
17 October 1995

Original: ENGLISH

COLLECTION

EXECUTIVE COMMITTEE OF THE
HIGH COMMISSIONER'S PROGRAMME

Forty-sixth session

REPORT OF THE SUB-COMMITTEE OF THE WHOLE ON INTERNATIONAL PROTECTION

I. INTRODUCTION

1. The Sub-Committee of the Whole on International Protection (Sub-Committee) met on 13 October 1995 under the chairmanship of His Excellency Ambassador J. Esper Larsen (Denmark). The Sub-Committee adopted the agenda contained in document EC/SCP/90.

2. The Chairman began by welcoming all Sub-Committee members and observers, the Director of the Division of International Protection, and other UNHCR staff who were involved in the work of the Sub-Committee.

II. REPORT OF THE 21 JUNE MEETING OF THE SUB-COMMITTEE

3. The Report of the 21 June 1995 Meeting of the Sub-Committee of the Whole on International Protection (EC/1995/SCP/CRP.4) was adopted without amendment.

III. NOTE ON INTERNATIONAL PROTECTION

4. Introducing the Note on International Protection (A/AC.96/850), the Director of International Protection observed that this year's discussion came at a time when the international community generally is showing increased anxiety over the real, potential and perceived burden of caring for and protecting people uprooted by civil war and violent political disputes.

5. He reminded delegations that positive action and jurisprudence by many States has carefully built up a system of protection which has responded humanely and effectively to the needs of millions of refugees each year. For example, in less than two months last year, poor countries in Africa received more than a quarter of Rwanda's population, over 2 million persons; and some 700,000 people fleeing Bosnia and Herzegovina and Croatia have found refuge in Western Europe. The Director also recalled the successes of the international community in finding solutions to refugee problems. In recent years, for example, most refugees have safely and permanently returned to Cambodia, El Salvador, Mozambique, Namibia and South Africa. The Director noted that States, with the support of international and non-governmental organizations (NGOs), have made the international system for refugee protection work, despite difficulties, by generally supporting an agreed framework of principles as the basis for concerted action.

6. In recent months, however, the world had seen women and children fleeing conflict being forced into dangerous areas, asylum-seekers held in sub-human conditions of detention, and thousands of refugees harshly *refouled*. Other worrisome trends include the narrowing of formal refugee recognition to minimum levels, attempts to streamline procedures to the exclusion of fair appeals before deportation, and efforts to constrict entitlement to basic rights for various groups of victims of civil conflict. The Director stressed that these tendencies are of particular concern to UNHCR when led by some of the nations that founded the system of human rights and refugee protection, and whose jurisprudence continues to be closely followed by the rest of the world.

7. The Director emphasized that this year's Note attempts to address these problems as well as a range of other issues relevant to extending international protection to all who require it as a result of mass outflows, especially from conflict. It also includes a number of considerations which UNHCR regards as central to any plan to fortify the international protection system. Among these are the need to develop constructive regional standards based on a liberal interpretation of the basic refugee instruments, and to avoid restrictive legal interpretations, especially those arising more out of concerns over illegal immigration than refugee movements.

8. Despite their age and obvious limitations, the Director suggested that the 1951 Convention and its 1967 Protocol remained a unique and irreplaceable bill of refugee rights. As they are constitutional safeguards, every effort must be made not to weaken or restrict them, or conveniently to suggest that they are no longer relevant. Recalling that two-thirds of all States are parties to the two instruments, he hoped that this number will soon include all Members and Observers of the Executive Committee. The Director concluded by recalling that the international refugee protection regime had come a long way in the last 50 years, but in 1995 faced new challenges not anticipated by its founders. He hoped that the discussion of the issues outlined in the Note would eventually enable the attainment of a new international consensus on the system needed to ensure protection and promote solutions to refugee crises in the coming years.

9. In the ensuing debate, the Note was widely praised for its concise but comprehensive discussion of protection developments over the years and, in particular, protection in situations of mass influx. Several delegations

welcomed the inclusion of two main elements in the Note: strengthening the legal protection of refugees, including those fleeing conflict; and alleviating the burden placed on many developing countries by mass influxes of refugees.

10. There was widespread agreement and support among delegations that the 1951 Convention and its 1967 Protocol remain the principal instruments of international refugee protection. In this regard, active measures must be taken to encourage accession and adherence to these instruments. Several delegations agreed that accession, in itself, is insufficient to guarantee a consistent and generous response to refugee needs. Equally important is the question of implementation of the refugee instruments. Delegations encouraged UNHCR to continue its promotion efforts and to assist States in their implementation of the refugee instruments. One delegation supported UNHCR's search for complementary strategies, which need to be both innovative and generous. While concerned that UNHCR might become overextended, another delegation nonetheless underlined that UNHCR should also assist and protect others in need, such as internally displaced and stateless persons.

11. On the issue of guiding principles for the provision of international protection to all who require it, several delegations welcomed such a proposal and suggested the creation of an open-ended informal working group to undertake this task. Other delegations reserved their position on the matter. One delegation suggested that the format for future work in this area is not as important as the need to start actual work on the guidelines. This could be facilitated if UNHCR identified a few elements for consultation and called on interested countries to proceed with discussions. Another delegation stressed that the guidelines related to the protection of persons fleeing from conflict, and not to the problems of mass influx, while a number of delegations referred to the need for flexible and pragmatic solutions. One delegation noted, with reference to the June Sub-Committee, that it is important to keep the necessary flexibility for temporary protection, while preserving its application within the framework of national legislation, and that it is appropriate, in discussing this theme, to guard against the elaboration of overly rigid guiding principles.

12. The issue of burden-sharing was addressed by several delegations. Speaking on behalf of a regional grouping, one delegation indicated that the group was currently working on the subject of burden-sharing among its members, with a view to improving coordination and the speed of response to crises. Another delegation maintained that burden-sharing in relation to affording temporary protection and resettlement seems most appropriate and often is carried out most efficiently in a regional context. Several delegations shared the Note's suggestion that international solidarity with both countries of asylum and countries of origin must be enhanced. It was observed by most that concerted action by the international community is needed to strengthen the capacity of the most affected States to receive and maintain refugees. A few delegations suggested that international solidarity and burden-sharing must be maintained until the eventual return of refugees, just as the protection of refugees should continue until durable solutions are found. However, one delegation would have preferred to see the principle of state responsibility, both for countries of asylum and countries of origin, further emphasized.

13. The issue of return was a recurring theme in several statements. Return was identified as the solution preferred by those most directly affected, the refugees. Some delegations suggested that international cooperation and solidarity with the countries in need is directly linked to the ultimate goal of return. One delegation, noting a close and direct link between the issue of return and that of post-conflict reconstruction and recovery, welcomed the Note's strong emphasis on issues such as human rights, the rule of law, reconciliation and the rehabilitation of structures and facilities in the country of origin.

14. A few delegations reiterated that individual asylum-seekers who are rejected through fair and transparent screening procedures should be returned, preferably on a voluntary basis. In this connection, it was recalled that countries of origin have an obligation to accept their citizens in such situations. One delegation urged UNHCR to develop further its role in monitoring the return of rejected cases and assisting with the reintegration of returning populations. It was observed by some delegations that failure to return rejected asylum-seekers poses a threat to the system of asylum. Some delegations noted that population movements involve persons in need of protection as well as those moving for purely economic reasons. The international system for refugee protection is being seriously challenged by economic migratory movements. While several delegations emphasized the need for States to combat illegal immigration, one delegation observed that the best way to discourage abusive asylum claims is to have an asylum procedure with proper eligibility criteria and adequate procedural safeguards, and which is equipped to reach prompt decisions, as well as a consistent policy to deal with persons who do not require international protection. One delegation urged UNHCR to continue elaborating solution-oriented, multi-dimensional approaches to situations of mass coerced population movements, including refugee-like situations.

15. A number of delegations reiterated the importance of closely monitoring developments in countries of origin. One delegation cautioned, however, that the legal status of internally displaced persons differs from that of refugees and, because the internally displaced continue to receive the protection of their Government, such displaced persons normally need international assistance, rather than protection.

16. The increasing use of temporary protection in situations of mass influx was identified by a number of delegations as a useful way of streamlining approaches to bridge the *lacunae* in the international protection regime. One delegation announced that in its country, many persons from the former Yugoslavia who had already been afforded temporary protection status are now being granted refugee status. Another delegation maintained that temporary protection, when applied in a manner consistent with the principle of *non refoulement*, can help avoid congestion for asylum procedures and create public solidarity and support. At least one delegation was of the view that a temporary protection regime should be separate and distinct from the international protection regime envisaged by the 1951 Convention and its 1967 Protocol.

17. One delegation noted with disappointment that there was no reference in the Note to resettlement as an instrument of protection. In its view, UNHCR did not appear to be putting into place its policy of using

resettlement as an instrument of protection, or as an appropriate and necessary durable solution for some refugees. Another delegation welcomed the recent recognition by the Beijing Conference on Women that sexual violence and other gender-related persecution can be grounds for the granting of refugee status under the 1951 Convention.

18. At least one delegation expressed deep concern for recent violations of the principle of *non refoulement*, as well as the hardening attitudes of some countries regarding refugee rights. Several delegations also stressed the need for efforts to stem the tide of recent xenophobic and racist tendencies. Others expressed concern at recent incidents in which refugees have been subjected to physical attacks. Addressing the issue of security in refugee camps, one delegation strongly endorsed the paragraph in the Note which recalls that the safety of refugee camps and settlements is predicated on their exclusively civilian and humanitarian character, and on the duty of refugees and host authorities to abstain from any activity likely to detract from this. It added that any action or omission which facilitates armed activities intended to destabilize Governments or any other hostile activity which may endanger safety and stability of States are clearly incompatible with the established principles governing the safety of refugee camps and settlements.

19. Responding to the debate, the Director of International Protection thanked delegations for their constructive comments. He replied that the Symposium on Gender-Based Persecution is scheduled for February 1996, and invitations and participants' lists would be sent out shortly. In this regard, he informed delegations that the Guidelines on Protection of Refugee Women are being revised for publication in 1996. In response to another question, the Director stressed that resettlement remains a key protection device for UNHCR. UNHCR's recent appeal for resettlement places for refugees from the former Yugoslavia and its contingency plan for that need was a direct recognition of the importance of resettlement as a tool of protection. The Director referred to the major resettlement consultation with selected States taking place the following day, 14 October, as further indication of its importance to the work of UNHCR. In addition, UNHCR is updating a Handbook on Resettlement which will be published next year. Finally, on the issue of guiding principles to provide international protection to persons who require it, the Director informed delegations that UNHCR remains open and available to Committee members for their suggestions on the process for going ahead with the preparation of such principles.

20. The Chairman thanked the Director and delegations for their comments and summarized the issues raised in the discussions. He reiterated the delegates' praise for the Note. A number of delegations had pointed to the usefulness of establishing further guidelines in order to bridge the lacunae in the international protection regime. The clear need for countries of asylum to honour their obligations had been expressed. Delegations had also stressed the need for countries of origin to receive and assist their returning citizens. Several delegations referred to their continued readiness to shoulder their responsibilities; some of these, at the same

time, pointed to the growing misuse of the system of asylum. The Chairman also noted that some delegations had rightly referred to the importance of respect for human rights and the linkage between human rights and the process of repatriation. Finally, he recalled, at least one delegation had referred to the question of safety and demilitarization of the refugee camps.

IV. UNHCR'S ACTIVITIES ON BEHALF OF STATELESS PERSONS

21. The Chairman recalled that the Executive Committee had, at its forty-fifth session, noted the persistent problems of stateless persons and called upon UNHCR to strengthen its efforts in this domain, while keeping the Executive Committee informed of these activities. He referred to the June 1995 session of the Sub-Committee, during which States agreed upon the importance of UNHCR's involvement with the issue.

22. The Chief of the General Legal Advice Section introduced the Note on Current UNHCR Activities on Behalf of Stateless Persons (EC/1995/SCP/CRP.6). She indicated that it is an issue in which the Executive Committee has shown growing interest and concern. Executive Committee Conclusions relating to the problem of statelessness date back to 1988, while the United Nations General Assembly resolution of that year on UNHCR noted "the close connection between the problems of refugees and of stateless persons" and invited States "actively to explore and promote measures favourable to stateless persons in accordance with international law." She stated that the current interest in addressing statelessness was linked to two additional trends: the greater emphasis on preventive activities, which can attenuate factors that might otherwise produce refugee flows, and the increased recognition of the role countries of origin must play in the search for solutions.

23. The Chief recalled that UNHCR participated in the Conference which drafted the 1954 Convention relating to the Status of Stateless Persons. UNHCR had advised on legislation in a number of situations, and intervened on behalf of individuals in others. She informed delegates of the compilation of relevant extracts of legislation pertaining to citizenship of the States parties to the 1961 Convention on the Reduction of Statelessness. The Speaker concluded that citizenship, and the ability to realize the rights inherent in nationality, act as a stabilizing factor, making the prevention and reduction of statelessness, and the protection of stateless persons, important for the prevention of potential refugee situations.

24. One delegation indicated strong support for UNHCR's activities in the area of statelessness and nationality legislation. The delegation encouraged UNHCR to continue work on the issue and to consider further measures for extending protection to those who are stateless as well as to those who may be at risk of becoming stateless. The Speaker requested that increased attention be given to preventive measures and to promotion of ratification of the 1954 and 1961 Conventions on statelessness. The delegation then announced that its country had initiated proceedings to accede to both the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The announcement was applauded.

25. Another delegation mentioned that citizenship and statelessness were sensitive issues which had political, human and social implications. The delegation said that their country had, following the break-up of the former national entity, adopted liberal legislation to automatically give citizenship to a large number of habitual residents; a simplified procedure for citizenship was also established for others. The delegation, therefore, supported UNHCR's initiative to promote the statelessness Conventions and UNHCR's activities to promote nationality legislation which reflected the right to citizenship.

26. The Chairman referred to interventions made by two other delegations during the discussion on the Note on International Protection. One delegation had stated that stateless persons were not entirely analogous to refugees and that UNHCR should, therefore, focus on preventive measures in the area of statelessness. Another delegation had urged UNHCR to develop education tools and supply expertise in areas where statelessness is of special concern. UNHCR should collect information, produce analysis on the problem, and report back to the Sub-Committee on developments. The Chairman suggested that the absence of further remarks on this issue should be interpreted as support for the conclusions delineated in the paper. He then gave the floor to the Director of International Protection, who extended his thanks to the delegation that had announced the efforts initiated to accede to the 1954 and 1961 Conventions. The Director hoped that this would be a forerunner of similar announcements by other delegations, particularly given the relatively low number of signatories to these international instruments. The Director further indicated his hope that the Members and Observers of the Sub-Committee would lead the way in promoting UNHCR's work in this area.

27. The Chief of General Legal Advice said she was encouraged by the reference to positive national legislation on citizenship. Summing up, the Chairman said delegations had encouraged UNHCR to promote accessions to the statelessness Conventions. They had also encouraged further research on the scope of the problem of statelessness and continued analysis of new nationality legislation, as well as the provision of technical advice to concerned Governments.

V. FOLLOW-UP OF THE RECOMMENDATIONS OF THE OAU/UNHCR SYMPOSIUM ON REFUGEES AND FORCED POPULATION DISPLACEMENTS IN AFRICA

28. The Deputy Director of International Protection introduced the Information Note on the Follow-up of the Recommendations of the Organization of African Unity (OAU)/UNHCR Symposium on Refugees and Forced Population Displacements in Africa (EC/1995/SCP/CRP.5). Recalling the subjects covered at the Symposium, she outlined the follow-up action already taken by UNHCR, including wide dissemination to Governments, NGOs and all UNHCR offices of the Symposium's recommendations, which have been printed in English and in French. The Symposium Document has also received wide publicity and has been circulated at meetings in Africa and elsewhere. At least two African universities have added the Document to their syllabi of courses on refugee matters. All recipients of the Document have been requested by UNHCR to consider and implement those recommendations relevant to them. In

particular, OAU Member States have been called upon to pay special attention to the recommendations on root causes of displacement, concrete refugee protection, and greater effectiveness in implementing the 1969 OAU Convention and efforts to achieve solutions to refugee problems.

29. The Deputy Director concluded by noting that UNHCR's office in Addis Ababa, in cooperation with the OAU General Secretariat, has developed a joint Plan of Action. In addition, OAU and UNHCR have organized various high-level meetings on the situation in the Great Lakes Region.

30. The Chairman summed up by saying that the Addis Ababa recommendations would continue to spur efforts both within the region and by the international community to prevent, respond to and resolve crises of displacement; it would also ensure that the protection and assistance needs of refugees and others of humanitarian concern are properly met, and would see to it that the burden of affected countries is eased by the international community.

VI. UNHCR'S ACTIVITIES FOR REFUGEE LAW PROMOTION, DISSEMINATION AND TRAINING

31. The Information Note on UNHCR's Activities for Refugee Law Promotion, Dissemination and Training (EC/SCP/91) was introduced by the Chief of UNHCR's Promotion of Refugee Law Section. Recalling that refugee law promotion, dissemination and training are important for the effective delivery of international protection, he sought the support of the Executive Committee with regard to the promotion of international instruments relating to the protection of refugees and stateless persons. He mentioned that UNHCR has made the databases known as REFWORLD available to an extensive user network by creating access through the Internet and had just completed REFWORLD CD-ROM, which would be made available to UNHCR, Governments, universities, NGOs and individual subscribers.

32. Describing ongoing efforts to delegate and decentralize promotional activities, he mentioned in particular the development of regional coordination mechanisms and other networks capable of securing a multiplier effect for UNHCR's initiatives. He further referred to twinning programmes as a means of expanding UNHCR cooperation with Governments, as well as cooperation among Governments.

33. In responding to the Information Note, one delegation thanked UNHCR for its activities in the area of refugee law promotion, dissemination and training and underlined that it constituted an important element of prevention. The delegation encouraged UNHCR to continue its activities in this area.

VII. ANY OTHER BUSINESS

34. The Chairman invited the Deputy Director of International Protection to give a summary of the Beijing Conference and UNHCR's protection-related follow-up activity. The Deputy Director informed the delegations that the

main sections in the Beijing Platform for Action which concern the protection of refugee women are those on human rights, violence and armed conflict. She stated that the Platform would help to strengthen UNHCR's own protection framework and activities on behalf of refugee women.

35. The Deputy Director informed the Sub-Committee that UNHCR was currently developing a module on rights awareness training for refugee women. In addition, the Division was developing a training module entitled *Human Rights and Refugee Protection*. One chapter of the module is devoted to women. She informed the delegations that UNHCR plans to revise the *Guidelines on the Protection of Refugee Women* with enhanced legal content. Additional issues to be included will be reproductive health, gender-based persecution, female genital mutilation, reconciliation and rights awareness training. She also recalled that UNHCR was planning to hold a round-table discussion with selected Governments on gender-based persecution in February 1996. In conclusion, the Deputy Director stated that there exists a well-defined policy on refugee women, and the real challenge facing UNHCR is to implement this policy in its field operations.

36. The Chairman thanked the Deputy Director for her informative comments and, in the absence of any further comments, adjourned the meeting.